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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/814,952

03/31/2004

Stephen R. Lawrence

24207-10094

8369

62296

7590

12/10/2008

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EXAMINER

VERDI, KIMBLEANN C

ART UNIT

PAPER NUMBER

2194

MAIL DATE

DELIVERY MODE

12/10/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/814,952	<b>Applicant(s)</b> LAWRENCE ET AL.	
	<b>Examiner</b> KimbleAnn Verdi	<b>Art Unit</b> 2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on August 29, 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>April 1, 2008</u>   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

Claims 1-36 are pending in the current application.

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 1-18, 35, and 36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

3. Claims 1-18 are directed to a process (method), however, the process does not include a physical structure and is not tied to another statutory class, as such the claims are not directed to statutory subject matter.

In contrast, a “computer implemented method” is a process claim with defined structural and functional interrelationships and tied to machine statutory class and therefore directed to statutory subject matter.

Appropriate correction or amendment is required.

4. Claim 35 is directed to a process (method), however, the process does not include a physical structure and is not tied to another statutory class, as such the claims are not directed to statutory subject matter.

In contrast, a “computer implemented method” is a process claim with defined structural and functional interrelationships and tied to machine statutory class and therefore directed to statutory subject matter.

Appropriate correction or amendment is required.

5. Claim 36 recites “a system” but no hardware associated with the system which is software per se. The system comprising means for receiving an event, however, according to the specification, the means for receiving an event is a synchronization manager (p. 14, paragraph [0025]). a synchronization manager appears to be software pro se and is functional descriptive material. However, function descriptive material is nonstatutory when claimed as descriptive material per se. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Since claim 36 does not recite the means receiving an event as being recorded on a computer-readable medium, the system is interpreted as comprising functional descriptive material per se and non statutory. See MPEP § 2106.01.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**7. Claims 1-6, 15-24, and 31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Culliss (U.S. Patent 6,006,222) in view of Vleet et al. (hereinafter Vleet) (U.S. Publication No. 2005/0033803 A1), and further in view of Subramaniam et al. (hereinafter Subramaniam) (U.S. Publication No. 2007/0208697 A1).**

8. As to claim 1, Culliss teaches the invention substantially as claimed including a method comprising:

the event being captured in the first device and associated with a term of an article (col. 3, lines 56-67 and col. 4, lines 1-25), the event being indexed and associated with the term of the article in a first index of the first device (col. 3, lines 56-67 and col. 4, lines 1-25).

9. Culliss does not explicitly disclose receiving in a second device an event from a first device; and indexing the event in a second index of the second device in a manner consistent with the indexing of the event in the first index such that the event is associated with the term of the article in the second index.

10. However Vleet teaches receiving in a second device an event from a first device (paragraphs [0025]-[0026] and [0078]).

11. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the search engine server of Culliss with the teachings of a event history server from Vleet because this feature would have provided an event history server system that persistently stores event data descriptive of events that occur during browsing sessions of web site users (paragraph [0007] of Vleet).

12. Culliss as modified by Vleet does not explicitly disclose indexing the event in a second index of the second device in a manner consistent with the indexing of the event in the first index such that the event is associated with the term of the article in the second index.

13. However Subramaniam teaches indexing the event in a second index of the second device (paragraph [0325]) in a manner consistent with the indexing of the event in the first index such that the event is associated with the term of the article in the second index (paragraphs [0320], [0323], and [0325]).

14. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have further modified the index of Culliss as modified by Vleet with the teachings of search index from Subramaniam because this feature would have further provided a mechanism to enable downloads of search index files to a remote client to provide mobile users to create search indices efficiently (paragraphs [0319]-[0320] of Subramaniam).

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15. As to claim 2, Culliss teaches wherein one or more of the first device and the second device is a client device (col. 12, lines 44-50 and col. 13, lines 12-15).

16. As to claim 3, Culliss teaches wherein one or more of the first device and the second device is a server device (col. 12, lines 44-50 and col. 13, lines 12-15).

17. As to claim 4, Culliss teaches wherein the term of the article is associated with a plurality of events Ids (col. 3, lines 61-67 and col. 4, lines 1-25), the plurality of event IDs associated with a plurality of events (col. 4, lines 1-25).

18. As to claim 5, Culliss teaches wherein the event is stored in a queue (col. 13, lines 50-53).

19. As to claim 6, Culliss teaches wherein the plurality of events is stored in a database (col. 13, lines 50-53).

20. As to claim 15, Culliss as modified by Vleet and further modified by Subramaniam teaches wherein the first index is located on a client computer (paragraph [0078] of Subramaniam) and the second index is located on a network server (paragraph [0078] of Subramaniam).

21. As to claim 16, Culliss as modified by Vleet and further modified by Subramaniam teaches wherein the first index is located on a first client computer

(paragraph [0079] of Subramaniam) and the second index is located on a second client computer (paragraph [0079] of Subramaniam).

22. As to claim 17, Culliss teaches wherein at least one of the first index and second index is encrypted (col. 3, lines 56-60).

23. As to claim 18, Culliss teaches wherein at least one of the first index and second index is searchable over a network (col. 12, lines 44-50 and col. 13, lines 12-15).

24. As to claims 19-24, these claims are rejected for the same reasons as claims 1-6 respectively, see the rejections to claims 1-6 above.

25. As to claims 31-34, these claims are rejected for the same reasons as claims 15-18 respectively, see the rejections to claims 15-18 above.

26. As to claim 35, Culliss teaches the invention substantially as claimed including a method comprising:

capturing an event, the event comprising event data (e.g. search query from user, col. 3, lines 56-67 and col. 4, lines 10-12);

assigning an event ID to the event (col. 3, lines 51-54 and col. 4, lines 1-25);

updating a first index by associating the event ID with terms related to the event (col. 3, lines 51-67 and col. 4, lines 1-25), the first index comprising a plurality of terms associated with a plurality of events (col. 3, lines 61-67 and col. 4, lines 1-25);



storing the event in a first repository (col. 13, lines 50-53);  
retrieving the event (col. 12, lines 50-54);  
generating and assigning a new event ID to the new event (col. 3, lines 61-67  
and col. 4, lines 1-25); and

the second index comprising a plurality of terms associated with a plurality of  
events (col. 3, lines 61-67 and col. 4, lines 1-25).

27. Culliss does not explicitly disclose sending the event to a client device;  
receiving the event as a new event, the new event comprising event data;  
updating a second index in manner consistent with the indexing of the event in  
the first index by associating the new event ID with terms related to the new event; and  
storing the new event in a second repository, wherein the second index and the  
second repository are substantially the same as the first index and the first repository.

28. However Vleet teaches sending the event to a second client (paragraph [0028]);  
receiving the event as a new event (paragraph [0025]), the new event comprising  
event data (paragraphs [0025]-[0026]).

29. It would have been obvious to a person of ordinary skill in the art at the time the  
invention was made to have modified the search engine server of Culliss with the  
teachings of a event history server from Vleet because this feature would have provided

an event history server system that persistently stores event data descriptive of events that occur during browsing sessions of web site users (paragraph [0007] of Vleet).

30. Culliss as modified by Vleet does not explicitly disclose updating a second index in manner consistent with the indexing of the event in the first index by associating the new event ID with terms related to the new event; and

storing the new event in a second repository, wherein the second index and the second repository are substantially the same as the first index and the first repository.

31. However Subramaniam teaches indexing the event in a second index of the second device (paragraph [0325]) in a manner consistent with the indexing of the event in the first index such that the event is associated with the term of the article in the second index (paragraphs [0320], [0323], and [0325]); and

storing the new event in a second repository (i.e. search directory on local machine, paragraph [0322]), wherein the second index and the second database are substantially the same as the first index and the first repository (paragraph 0320).

32. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have further modified the index of Culliss as modified by Vleet with the teachings of search index from Subramaniam because this feature would have further provided a mechanism to enable downloads of search index files to a remote

client to provide mobile users to create search indices efficiently (paragraphs [0319]-[0320] of Subramaniam).

33. As to claim 36, this claim is rejected for the same reasons as claim 1, see the rejection to claim 1 above.

**34. Claims 7-14 and 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Culliss (U.S. Patent 6,006,222) in view of Vleet et al. (hereinafter Vleet) (U.S. Publication No. 2005/0033803 A1), and further in view of Subramaniam et al. (hereinafter Subramaniam) (U.S. Publication No. 2007/0208697 A1), and further in view of Hartsell et al. (hereinafter Hartsell) (2002/0049608 A1).**

35. As to claim 7, Culliss as modified by Vleet and further modified by Subramaniam does explicitly disclose monitoring system resources prior to sending the plurality of events to a second machine.

36. However Hartsell teaches monitoring system resources; and receiving the event (e.g. content data) by the second device (paragraph [0188]) when a resource level of the system resources is above a desired level (paragraph [0196]).

37. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have further modified the networked computer system of Culliss as modified by Vleet and further modified by Subramaniam with the teachings of a content delivery system from Hartsell because this feature would have further provided a mechanism to solve unpredictability, delivery latencies, capacity planning, and other problems associated with general application serving in a computer network environment, for example, in the delivery of streaming media, data and/or services (paragraph [0009] of Hartsell).

38. As to claim 8, Culliss as further modified by Hartsell teaches wherein monitoring system resources comprises monitoring available memory on the first device (paragraph [0194] of Hartsell).

39. As to claim 9, Culliss as further modified by Hartsell teaches wherein monitoring the system resources comprises monitoring available memory on the second machine (e.g. by monitoring agent on second device (paragraph [0194] of Hartsell)).

40. As to claim 10, Culliss as further modified by Hartsell teaches wherein monitoring the system resources comprises monitoring bandwidth, network latency, jitter, or cost (paragraph [0095] of Hartsell).

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41. As to claim 11, Culliss as further modified by Hartsell teaches wherein monitoring the system resources comprises monitoring server activity (paragraphs [0191]-[0192] of Hartsell).

42. As to claim 12, Culliss as further modified by Hartsell teaches wherein monitoring the system resources comprises monitoring client activity (paragraphs [0191]-[0192] of Hartsell).

43. As to claim 13, Culliss as further modified by Hartsell teaches holding the event in a queue (e.g. not accepting requests of Hartsell) when the system resources are below a threshold value (paragraph [0196] of Hartsell).

44. As to claim 14, Culliss as further modified by Hartsell teaches wherein the event is not accepted by the second device when system resources are below the desired level (paragraphs [0195]-[0196] of Hartsell).

45. As to claims 25-29, these claims are rejected for the same reasons as claims 7-11 respectively, see the rejections to claims 7-11 above.

46. As to claim 30, this claim is rejected for the same reasons as claim 13, see the rejection to claim 13 above.

***Response to Arguments***

47. Applicant's arguments with respect to claims 1-36 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

48. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

49. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

50. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KimbleAnn Verdi whose telephone number is (571)270-1654. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EST..

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51. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

52. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Meng-Ai An/  
Supervisory Patent Examiner, Art Unit 2195

KV  
December 4, 2008